



Consumer Alert

Fair Foreclosure Act of 2012

Banks, lenders and mortgage servicers have added a new weapon to their arsenal to defeat homeowners in the foreclosure crisis . . . legislation. Unhappy with crowded court dockets and the prying eyes of homeowners' attorneys and judges, the banking lobby has drafted the Fair Foreclosure Act of 2012.

Industry insiders have proposed a draft bill which, if passed, would essentially preclude homeowners from defending a foreclosure, usurp the due process oversight of the courts and fast track the foreclosure process. If passed, it would discount the past lending, servicing and collection misconduct of banks which created our nation's current financial crisis. Some of the most troubling provisions of the act include:

- Non-judicial foreclosure where loan balance exceeds 120% of the property value.
- Fast tracking of foreclosure cases once filed.
- Court must enter judgment within 45-90 days for uncontested foreclosures.
- Attorney fee entitlement to the prevailing party to the foreclosure.
- Repeal of Fla. Stat. 57.105 (attorney fee sanctions for bringing unsupported claims).
- Automatic return of Promissory Note to lender upon dismissal of foreclosure.
- Challenges to set aside wrongful foreclosures may only seek monetary damages and not quiet or disturb the title held by bank or later buyer.
- Sales of foreclosed property founded upon Lost/Destroyed Promissory Notes cannot be challenged by true holder of the Promissory Note.

As you can see, this proposed legislation attempts to dispense with due process, exclude the courts, speed up the process and automate the mechanisms to displace Florida homeowners from their homes. If passed, the bill would essentially prohibit homeowners from effectively defending their homes. Presently, the banking lobby is soliciting a bill sponsor and supporters for this dangerous bill.

Our firm is strongly opposed to this bill and we are committed to its defeat in the Florida legislature. If you have questions about this bill, please feel free to contact the attorneys at Gallagher & Associates Law Firm, P.A.

If you oppose this bill, it is important to contact your state legislators and voice your concerns. To find out your legislators, visit www.myfloridahouse.gov.